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PILLSBURY WINTHROP SHAW PITTMAN, LLP
P.O. BOX 10500
MCLEAN VA 22102

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OFFICE OF PETITIONS

In re Application of :
Frankel et al. :
Application No. 10/042,335 : DECISION ON PETITION
Filed: 11 January, 2002 :
Atty Docket No. 061047-0282618 :

This is a decision on the petition filed on 1 March, 2006, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is GRANTED.

The application became abandoned on 1 December, 2005, for failure to timely reply to the non-final Office action mailed on 30 August, 2005, which set a three (3)-month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. The filing of the present petition precedes the mailing of Notice of Abandonment.

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Petitioners have filed an amendment as the required reply.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.² The three-month extension request filed on 1 March, 2006, was submitted more than three (3) months after the end of the period for reply to the non-final Office action mailed on 30 August, 2005, and therefore is unnecessary. The extension of time fee paid on 1 March, 2006, will be credited to counsel's deposit account as authorized.

This application is being referred to Technology Center Art Unit 3624 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

² See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).